

COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 34, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

1 Delete the title and insert the following:
2 A BILL FOR AN ACT to amend the Indiana Code concerning
3 property.
4 Delete everything after the enacting clause and insert the following:
5 SECTION 1. IC 32-8-3-1, AS AMENDED BY P.L.53-1999,
6 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2002]: Sec. 1. (a) That contractors, subcontractors, mechanics,
8 lessors leasing construction and other equipment and tools, whether or
9 not an operator is also provided by the lessor, journeymen, laborers and
10 all other persons performing labor or furnishing materials or
11 machinery, including the leasing of equipment or tools used, for the
12 erection, altering, repairing or removing any house, mill, manufactory,
13 or other building, bridge, reservoir, systems of waterworks, or other
14 structures, or for construction, altering, repairing, or removing any walk
15 or sidewalk, whether such walk or sidewalk be on the land or bordering
16 thereon, stile, well, drain, drainage ditch, sewer or cistern or any other
17 earth-moving operation may have a lien separately or jointly upon the
18 house, mill, manufactory or other building, bridge, reservoir, system of
19 waterworks or other structure, sidewalk, walk, stile, well, drain,
20 drainage ditch, sewer or cistern or earth which they may have erected,
21 altered, repaired, moved or removed or for which they may have
22 furnished materials or machinery of any description, and, on the
23 interest of the owner of the lot or parcel of land on which it stands or
24 with which it is connected to the extent of the value of any labor done,
25 material furnished, or either, including any use of such leased
26 equipment and tools, and all claims for wages of mechanics and

laborers employed in or about any shop, mill, wareroom, storeroom, manufactory or structure, bridge, reservoir, system of waterworks or other structure, sidewalk, walk, stile, well, drain, drainage ditch or cistern or any other earth-moving operation shall be a lien on all the machinery, tools, stock or material, work finished or unfinished, located in or about such shop, mill, wareroom, storeroom, manufactory or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth used in a business.

(b) If the person, firm, limited liability company, or corporation described in subsection (a) is in failing circumstances, the claims described in subsection (a) shall be preferred debts whether a claim or notice of lien has been filed or not.

(c) A provision or stipulation described by this subsection may only be included in a construction contract for the construction, alteration, or repair of the following:

(1) A Class 2 structure (as defined in IC 22-12-1-5) or an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).

(2) Property that is:

(A) owned, operated, managed, or controlled by a public utility (as defined in IC 8-1-2-1), municipally owned utility (as defined in IC 8-1-2-1), joint agency (as defined in IC 8-1-2.2-2), rural electric membership corporation formed under IC 8-1-13-4, **rural telephone cooperative corporation formed under IC 8-1-17**, or not-for-profit utility (as defined in IC 8-1-2-125) regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, **telecommunications services**, or power to the public.

No provision or stipulation in the contract of the owner and principal contractor that no lien shall attach to the real estate, building, structure or any other improvement of the owner shall be valid against subcontractors, mechanics, journeymen, laborers or persons performing labor upon or furnishing materials or machinery for such property or improvement of the owner, unless the contract containing such provision or stipulation shall be in writing, and shall contain specific reference, by legal description of the real estate to be improved and shall be acknowledged as provided in case of deeds and filed and recorded in the recorder's office of the county in which such real estate, building, structure or other improvement is situated not more than five (5) days after the date of execution of such contract. The contract herein provided for shall be without effect upon labor, material or machinery supplied prior to the time of the filing with the recorder of said contract. The recorder shall record such contract at length in the order of time of its reception in books provided by him for that purpose, and the recorder shall index the same in the name of the contractor and in the name of the owner, in books kept for that purpose, and said recorder shall receive therefor a fee such as is provided for the recording of deeds and mortgages in his office.

(d) Any person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit any material, labor or machinery for the alteration or repair of any owner-occupied single or double family dwelling or the appurtenances or additions to the dwelling, to any contractor, subcontractor, mechanic, or anyone other than the occupying owner or the owner's legal representative shall furnish to the occupying owner of the parcel of land where the material, labor or machinery is delivered, a written notice of the delivery or work and of the existence of lien rights, within thirty (30) days from the date of first delivery or labor performed. The furnishing of the notice shall be a condition precedent to the right of acquiring a lien upon the lot or parcel of land or the improvement on the lot or parcel of land.

(e) Any person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit any material, labor or machinery, for the original construction of a single or double family dwelling for the intended occupancy of the owner upon whose real estate the construction takes place to any contractor, subcontractor, mechanic, or anyone other than the owner or the owner's legal representatives shall furnish the owner of the real estate as named in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor, or if IC 6-1.1-5-9 applies, the transfer books of the township assessor with a written notice of the delivery or labor and the existence of lien rights within sixty (60) days from the date of the first delivery or labor performed and shall file a copy of the written notice in the recorder's office of the county within sixty (60) days from the date of the first delivery or labor performed. The furnishing of such notice shall be a condition precedent to the right of acquiring a lien upon the real estate or upon the improvement constructed on the real estate.

(f) A lien for material or labor in original construction may not attach to real estate purchased by an innocent purchaser for value without notice, if the purchase is of a single or double family dwelling for occupancy by the purchaser, unless notice of intention to hold the lien is recorded as provided in this chapter prior to the recording of the deed by which the purchaser takes title.

SECTION 2. IC 32-8-3-5, AS AMENDED BY P.L.53-1999, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. (a) As used in this section, "lender" refers to:

- (1) an individual;
- (2) a supervised financial organization (as defined in IC 24-4.5-1-301);
- (3) an insurance company or a pension fund; or
- (4) any other entity that has the authority to make loans.

(b) The recorder shall record the notice, when presented, in the miscellaneous record book, for which the recorder shall charge a fee in accordance with IC 36-2-7-10. All liens so created shall relate to the time when the mechanic or other person began to perform the labor or furnish the materials or machinery. Except as provided in subsection (c), all liens shall have priority over liens suffered or created thereafter, except the liens of other mechanics and materialmen, as to which there

1 shall be no priority.

2 (c) The mortgage of a lender has priority over all liens under this
3 chapter recorded after the date the mortgage was recorded to the extent
4 of the funds actually owed to the lender for the specific project to
5 which the lien rights relate. This subsection does not apply to a lien that
6 relates to a construction contract for the development, construction,
7 alteration, or repair of the following:

8 (1) A Class 2 structure (as defined in IC 22-12-1-5) or an
9 improvement on the same real estate auxiliary to a Class 2
10 structure (as defined in IC 22-12-1-5).

11 (2) Property that is:

12 (A) owned, operated, managed, or controlled by a public utility
13 (as defined in IC 8-1-2-1), municipally owned utility (as
14 defined in IC 8-1-2-1), joint agency (as defined in
15 IC 8-1-2.2-2), rural electric membership corporation formed
16 under IC 8-1-13-4, **rural telephone cooperative corporation**
17 **formed under IC 8-1-17**, or not-for-profit utility (as defined
18 in IC 8-1-2-125) regulated under IC 8; and

19 (B) intended to be used and useful for the production,
20 transmission, delivery, or furnishing of heat, light, water,
21 **telecommunications services**, or power to the public.

22 SECTION 3. IC 32-8-3-16, AS ADDED BY P.L.53-1999,
23 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2002]: Sec. 16. (a) This section applies to a construction
25 contract for the construction, alteration, or repair of a building or
26 structure other than the following:

27 (1) A Class 2 structure (as defined in IC 22-12-1-5) or an
28 improvement on the same real estate auxiliary to a Class 2
29 structure (as defined in IC 22-12-1-5).

30 (2) Property that is:

31 (A) owned, operated, managed, or controlled by a public utility
32 (as defined in IC 8-1-2-1), municipally owned utility (as
33 defined in IC 8-1-2-1), joint agency (as defined in
34 IC 8-1-2.2-2), rural electric membership corporation formed
35 under IC 8-1-13-4, **rural telephone cooperative corporation**
36 **formed under IC 8-1-17**, or not-for-profit utility (as defined
37 in IC 8-1-2-125) regulated under IC 8; and

38 (B) intended to be used and useful for the production,
39 transmission, delivery, or furnishing of heat, light, water,
40 **telecommunications services**, or power to the public.

41 (b) A provision in a contract for the improvement of real estate in
42 Indiana is void if the provision requires a person described in section
43 1 of this chapter who furnishes labor, materials, or machinery to waive
44 a right to a lien against real estate or to a claim against a payment bond
45 before the person is paid for the labor or materials furnished.

46 (c) A provision in a contract for the improvement of real estate in
47 Indiana under which one (1) or more persons agree not to file a notice
48 of intention to hold a lien is void.

49 SECTION 4. IC 32-8-3-18, AS ADDED BY P.L.53-1999,
50 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2002]: Sec. 18. (a) This section applies to a provider of labor, materials, or equipment under a contract for the improvement of real estate that conditions the right of the provider to receive payment on the obligor's receipt of payment from a third person with whom the provider does not have a contractual relationship.

(b) This section does not apply to a construction contract for the construction, alteration, or repair of the following:

(1) A Class 2 structure (as defined in IC 22-12-1-5) or an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).

(2) Property that is:

(A) owned, operated, managed, or controlled by a public utility (as defined in IC 8-1-2-1), municipally owned utility (as defined in IC 8-1-2-1), joint agency (as defined in IC 8-1-2.2-2), rural electric membership corporation formed under IC 8-1-13-4, **rural telephone cooperative corporation formed under IC 8-1-17**, or not-for-profit utility (as defined in IC 8-1-2-125) regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, **telecommunications services**, or power to the public.

(c) An obligor's receipt of payment from a third person shall not be a condition precedent to, or in any way limit, or be a defense to the provider's right to record or foreclose a lien against the real estate that was improved by the provider's labor, material, or equipment.

(Reference is to SB 34 as introduced.)

and when so amended that said bill be reassigned to the Senate Committee on Judiciary.

GARTON

Chairperson